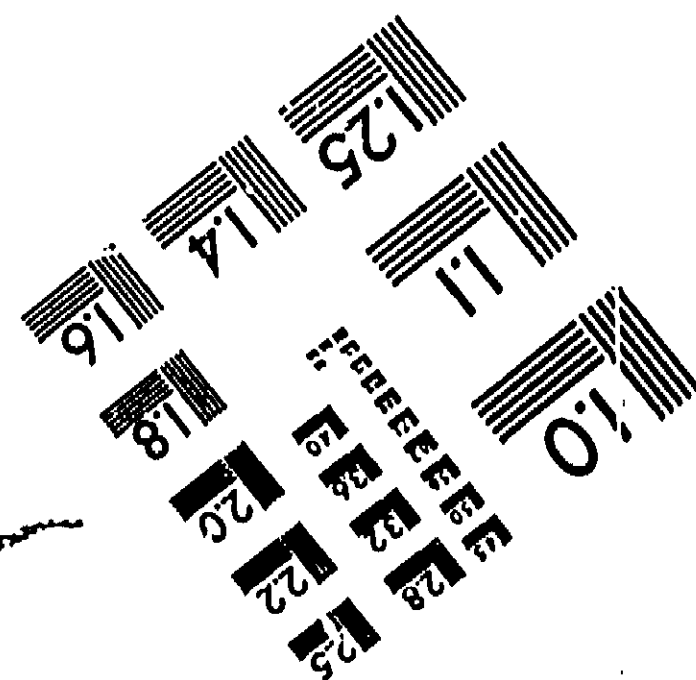
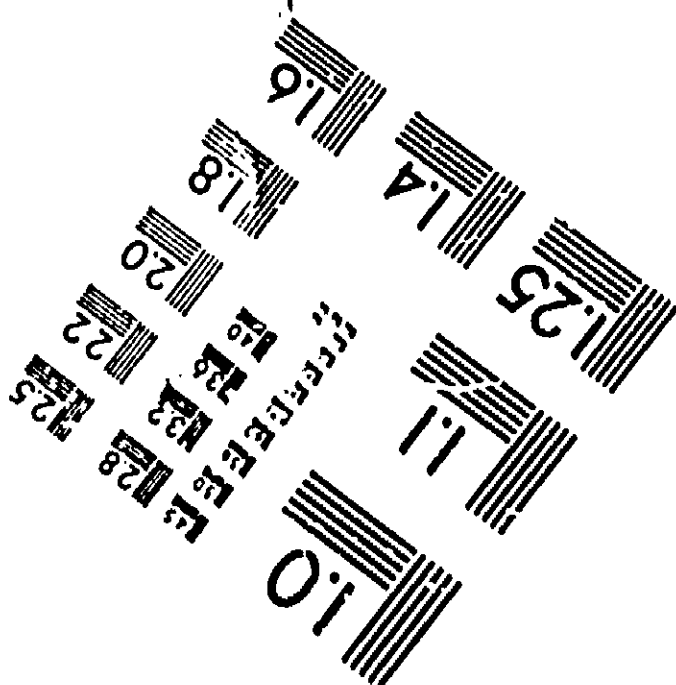
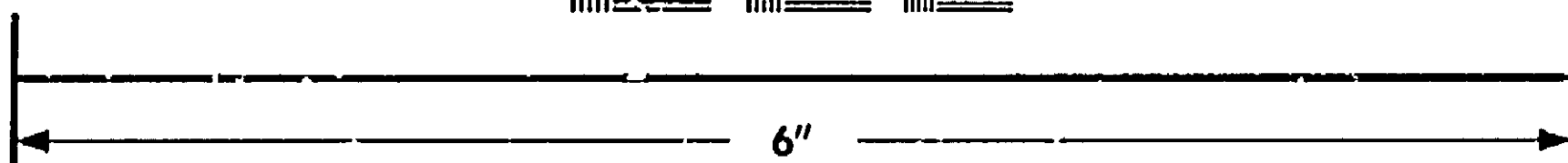


IMAGE EVALUATION TEST TARGET (MT-3)



PHOTOGRAPHIC SCIENCES CORPORATION
 770 BASKET ROAD
 P.O. BOX 338
 WEBSTER, NEW YORK 14560
 (716) 265-1600



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Billard

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-207161

DATE: June 2, 1982

MATTER OF: Gary Ray

DIGEST:

Small Business Administration's refusal to issue a Certificate of Competency to small business found nonresponsible by contracting officer is conclusive on GAO and will not be reviewed absent a showing of fraud or bad faith.

Gary Ray protests the award to the second low bidder of a contract to furnish sawdust under invitation for bids (IFB) No. R6-10-32-7 issued by the U.S. Forest Service. For the following reasons, the protest is dismissed.

The IFB requested bids from those interested in supplying 15,000 cubic yards of sawdust at least 10 years old and capable of passing through a 3/4-inch mesh screen. Mr. Ray, who was the low bidder, contends that he was not awarded the contract because the Forest Service wrongly determined that all of the sawdust in his possession was not 10 years old.

The Forest Service states that Mr. Ray has misunderstood the reason his bid was rejected and advises that Mr. Ray was found to be nonresponsible after a preaward survey disclosed that he had only 3,000 cubic yards of technically acceptable sawdust ready for delivery, with the balance of the required amount unscreened and unlikely to be ready within the contract performance time. The Forest Service states that after it had referred the question of Mr. Ray's responsibility to the Small Business Administration (SBA), and SBA refused to issue him a Certificate of Competency, the contract was awarded to the next low bidder.

When an agency determines that a small business bidder is nonresponsive, the law requires that the matter be referred to the SBA, which conclusively determines the bidder's responsibility by issuing or declining to issue a COC, and that determination is conclusive on our Office. Where no question of fraud or bad faith is involved, we cannot require or recommend either that the SBA issue a COC or that the SBA reopen a case where a COC has been denied. J. Baranello and Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. Here, there has been no allegation or showing of fraud or bad faith.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel

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